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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Failure of the Government of Sri Lanka to Implement Its Commitments on Accountability in Human Rights Council Resolution 30/1*

The Government of Sri Lanka co-sponsored Human Rights Council (HRC) Resolution 30/1 in March 2015 and reaffirmed these commitments through co-sponsoring Resolution 34/1 in March 2017. The Government's commitments include the establishment and implementation of a comprehensive transitional justice process to help heal the country and allow victims to move beyond the suffering and destruction of the 26-year war that ended in 2009.

Unfortunately, by March 2017, the Government has made little progress on its commitments, prompting the UN High Commissioner for Human Rights to recommend that the Government, in cooperation with the HRC, declare a time-bound plan for implementing the main elements of its transitional justice commitments. If the Government does not take immediate action on establishing and publicizing their plan, the HRC, its member states and the Office of the UN High Commissioner for Human Rights (OHCHR) must take firmer steps to encourage Sri Lanka's progress on ensuring peace and stability in the country.

The Government's 25 key commitments in Resolution 30/1 covered a comprehensive range of transitional justice processes and mechanisms, including the meaningful consultation of victims and other stakeholders in planning and implementing all mechanisms[1] and the establishment of 'judicial and non-judicial measures.'[2] Such measures include '*inter alia*, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, *inter alia*, ensure accountability, serve justice, provide victims with remedies, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law with a view to preventing the recurrence of violations and abuses.'[3]

Sri Lanka agreed to undertake security sector reform through demilitarization, land returns, and the withdrawal of security forces from civilian activities. The Government also committed to implement legal reform, including constitutional reform, to achieve a devolved political settlement, reform of witness protection laws, criminalization of atrocity crimes and enforced disappearances, and repeal of the Prevention of Terrorism Act (PTA). The Government committed to preserve all evidence and to investigate and address ongoing human rights abuses, including attacks on civil society and sexual and gender-based violence and torture.

For accountability purposes, the Government's most important commitment was to 'establish a Judicial Mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; and affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for integrity and impartiality; and further affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the Special Counsel's office, of Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators.'[4]

Three years after the HRC unanimously adopted Resolution 30/1, the Government of Sri Lanka has made minimal progress toward implementing their transitional justice promises. We would like to note the Government's limited progress in the following areas:

1. Although the Convention for the Protection of All Persons from Enforced Disappearances has not been domesticated, the Government acceded to it.

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1 Preambular Paragraph #15

2 ibid.

3 ibid.

4 Operative Paragraph #6

2. Consultation with victims and other stakeholders through the 2016 Consultation Task Force (CTF), although the Government has not endorsed or implemented the CTF's recommendations and has not undertaken further consultations.

3. An Office of Missing Persons (OMP) was legislated in 2016, but is not yet operational. The process did not involve consultations with victims, there is no mandated link to a judicial process, foreign funding and expertise is explicitly forbidden and the OMP is not required to share its findings with families of the missing. Though the President agreed to these families' call to publish a comprehensive list of people who surrendered during the last phase of the civil war—listing the names of all detainees or arrestees, those who are still in custody and their location of detention, and those who have been released and to whom they were released, no action has been taken yet.

4. Return of land stolen/occupied by security forces to their Tamil civilian owners has proceeded very slowly, with disagreements about how much land is held. Additionally, new land continues to be seized.

Any progress that has occurred has been thanks to steady pressure by international bilateral and multilateral mechanisms, such as the HRC. It is therefore imperative that the HRC and its members continue to pay close attention to Sri Lanka's transitional justice progress and urge the Government to take swift action in implementing its commitments.

Constitutional reform has stalled, little security sector reform has been undertaken—there have been no comprehensive vetting and lustration processes—and no truth-telling, reparations or judicial accountability mechanisms have been established. While the Government said that it has initiated various 'reconciliation' mechanisms, they are Colombo-based and were set up without victim consultations. Accordingly, they have not provided meaningful redress to actual victims of abuse, who primarily live in the North-East.

In addition to the lack of progress on reconciliation and transitional justice, the Government has not prevented ongoing human rights violations against the Tamil and Muslim communities as well as journalists, human rights defenders and political dissidents. The counter-terrorism apparatus remains in place, undiminished and unreformed, albeit less visible under the current government. Abductions, torture, sexual and gender-based violence,5 illegal land appropriation,6 state-sponsored population transfers that change the demography of Tamil areas, religious and cultural intolerance,7 language and economic discrimination, political exclusion and gerrymandering, appropriation of timber, agricultural land, minerals and resources of the sea under the protection of the state8 are all continuing under the current government.

These abuses are exacerbated by the presence of one of the highest concentrations of military forces in the world by one of the largest militaries (per capita) in Asia, most of whom remain deployed in the Tamil and Muslim areas in the North-East. The nearly 100% Sinhalese security forces have committed torture, sexual and gender-based violence, human smuggling and trafficking,9 economic strangulation, monetary extortion and surveillance of all civilian activities. These abuses against the Tamil population, which have taken place in the aftermath of mass atrocities, are aimed at the destruction of the Tamil community within our own 'area of historical habitation'10 on the island.

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5 Systematized abduction, torture & sexual violence are documented in reports by the International Truth & Justice Project such as http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf which all note the involvement & often physical presence of senior officers. Also HRW's latest report https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act

6http://www.tamilguardian.com/files/File/BTF/Land%20occupied%20by%20Security%20forces%20in%20Northern%20province.pdf

7 http://sangam.org/wp-content/uploads/2016/08/BTF-Land-grab-and-cultural-colonisation-of-the-Tamil-land-in-Sri-Lankav-v7.pdf

8 https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/justice-denied.pdf

9 http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf

10 1987 Indo-Lanka Accord https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20LK_870729_Indo-Lanka%20Accord.pdf

The March 2017 call by the High Commissioner for Human Rights for Sri Lanka to announce a time-bound action plan, which was echoed by several countries, remains unfulfilled. Mothers of disappeared and missing persons have been protesting on the roadside for over a year, demanding information about the whereabouts and fates of their children. Protests against the illegal acquisition of land are also frequent and widespread. Moreover, Tamil politicians and civil society note the lack of progress on transitional justice, reconciliation and accountability at every opportunity.

Pasumai Thaayagam Foundation and our associated NGOs urge the HRC and its members to strongly act in the absence of actual progress on transitional justice by the Government, including by executing travel bans on accused war criminals, implementing asset freezes on accused war criminals and human rights abusers, and seeking detentions and prosecutions when accused war criminals travel to or through their countries. In addition, as Sri Lanka's long-awaited constitutional reform drags on, we ask concerned governments and human rights bodies to push for the incorporation of transitional justice provisions in any new constitution that may emerge, along with strong political devolution.

We urge the UN High Commissioner for Human Rights to issue specific alternative measures to address Sri Lanka's non-compliance with Human Rights Council Resolutions 30/1 and 34/1, including a possible referral to the UN Security Council.

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*British Tamils Forum (BTF), The United States Political Action Council (USTPAC), NGOs without consultative status, also share the views expressed in this statement.